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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO. 286 OF 2014

Ashok Patel, Deputy Managing Director ...Appellant
Versus
The Commissioner of Central Excise, Mumbai II & Ors. ...Respondents

WITH
CENTRAL EXCISE APPEAL NO. 299 OF 2014

M/s. Standard Drum and Barrel Manufacturing Co. ...Appellant
Versus
The Commissioner of Central Excise, Mumbai II & Ors. ...Respondents

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Mr. V. Sridharan, Senior Counsel, *a/w Mr. Prakash Shah and Mr. Jas Sanghavi, Mr. Rajesh Ostwal, for the Appellant in both Appeals.*
Mr. Advait Sethna, *a/w Mr. Jitendra B. Mishra, for the Respondents in both Appeals.*

CORAM: S.C. DHARMADHIKARI & G.S. PATEL, JJ.
DATED: 22nd February 2016

PC:-

1. These two Appeals challenge the order passed by the Customs, Excise & Service Tax Appellate Tribunal (**"Tribunal"**).

2. We only take the facts in Central Excise Appeal No. 299 of 2014 and as Central Excise Appeal No. 286 of 2014 raise a question which is common and treated to be a substantial question of law. That questions read as under:

> "(a) Whether in the facts and circumstances of the case, the impugned Order passed by the Appellate Tribunal is correct in upholding the demand of duty of Rs. 48,46,583/- along with interest and penalty of Rs. 10,00,000/-?
>
> (d) Whether, in the facts and circumstances of the case, the impugned order passed by the Appellate Tribunal is vitiated in holding that the Appellant has admitted the difference between the quantity shown in GP-1 and MRR in the course of investigation which has not been retracted when the same was specifically retracted vide letter dated 11.8.1997 and also when the Appellant has not admitted that the alleged difference is due to clandestine removal of drums?"

3. The facts are few and simple. The Appellant is a Company and it is stated to be manufacturing MS drums (Mild Steel Drums) on job work basis falling under Tariff sub-heading 731000 of the First Schedule to the Central Excise Tariff Act, 1985. The job work activity undertaken for Hindustan Petroleum Corporation Limited

(**“HPCL”**) and in the period 1st March 1992 to 31st March 1993 has been dragged on and on till this date.

4. A copy of the purchase order was scrutinized and the Revenue discovered therefrom that the excise duty was not paid and in accordance with law. The investigation was initiated and various records were obtained from the HPCL and the Appellant. During the course of investigation, statement of Mr. Ashok Manibhai Patel, Deputy Managing Director of the Appellant was recorded. The show-cause notice recites this and the other allegations and seeks to recover central excise duty of Rs. 48,46,583/- and penalty.

5. The individuals are also proceeded against for their acts of omission and commission.

6. The Appellant claimed that it filed a Reply dated 11th August 1997 to the show-cause notice and in which *inter alia* it was urged that the statement of Mr. Ashok Manibhai Patel dated 30th December 1996 was given under duress as he was under constant threat of arrest and in fact was arrested on 11th March 1997.

7. The argument before us and as earlier reiterated before the Tribunal and the Commissioner was that this retracted statement has been heavily relied upon and which could not have been done. It is in these circumstances that the order-in-original dated 21st November 1997 confirming the entire demand of duty along with interest and equal amount of penalty, so also the Tribunal's order are challenged.

8. The Tribunal's order is dated 28th April 2014 on the Appeals which were filed before it and bearing Nos. E/3148 and 3149 of 2006.

9. These Appeals were placed before the Member (Judicial) of the Tribunal on 4th April 2014 and a short cryptic order passed thereon and material for our purpose reads as under:

> "6. It is the case, when the Revenue was able to prove that the appellants have cleared 10,37,048 drums to M/s. HPCL and the appellants have paid duty only on 9,02,836 drums as per GP I Gate pass. The said fact has been admitted by the appellants during the course of investigation and the same has not been retracted. In these circumstances, I do not find any reason to interfere with the impugned order and the same is upheld. The appeals filed by the appellants are dismissed."

10. Mr. Sridharan, learned Senior Advocate appearing on behalf of the Appellant would submit that the substantial questions of law arise simply because according to the Revenue and the Tribunal as well the violation or breach of the law has been admitted during the course of investigation and there is no retraction of that position by the Company or the individual. This is a finding which is incorrect and the Tribunal has not adverted to all the materials placed before the Commissioner when he passed the order-in-original as also before the Tribunal in the form of letter dated 11th August 1997.

11. On the other hand Mr. Sethna appearing on behalf of the Revenue would submit that this is nothing but re-appreciation and reappraisal of factual findings and the impugned order does not raise any substantial question of law and the Appeals deserve to be dismissed. This is not a case, according to him, when any statement or admission of the Company stands retracted. Some letter and looked in isolation would not assist the Appellant any further. These Appeals raise no substantial question of law.

12. After having heard both sides, we are of the view that the Appeals do raise substantial questions of law. That is how we admit them on the two substantial questions of law.

13. We have deliberately reproduced paragraph 6 of the impugned order hereinabove. That recites that there is an admission during the course of investigation and that had not been retracted.

14. However, what we find is that the show-cause notice is dated 31st March 1997. In reply to that show-cause notice, a letter dated 11th August 1997 specifically states at page 91 and after denying the allegations in the show-cause notice that the statement of Mr. Ashok Manibhai Patel, Deputy Managing Director of the Appellant dated 30th December 1996 was given under duress because he was under constant threat that he would be arrested if he did not give confessional statement. Even then he only admitted a fact in part but did not admit that there was any removal of drums without payment of duty. He was arrested on 11th March 1997 and could not immediately retract these statements. Therefore, the show-cause notice be dropped as against him.

15. As against this version, the Company also had indicated that it was undertaking a job work. M/s. HPCL will not allow its raw material to be utilized for the manufacture of drums for others or to allow to dispose of the production of drums in any manner other than to supply them. That is how the allegations in paragraph 22 of the show-cause notice regarding deliveries of drums to undisclosed parties was denied and termed as imaginary. Once the job work was the activity undertaken and there was a denial of the liability to pay duty, so also on the above material that the least that is expected of a last fact finding authority, viz., the Customs, Excise & Service Tax Appellate Tribunal is to consider this aspect in detail. That it is factual but necessarily requires and merits its consideration goes without saying, else, a party like the Appellant has no opportunity to satisfy any authority that the adjudication is not in accordance with law and that there is a perversity in the order-in-original. If as an Appellate Authority, the Tribunal does not wish to examine this, then, its refusal raises a substantial question of law. The last fact finding authority, viz., the Tribunal should have gone by the record. By not considering the record in its entirety and referring to some isolated event that too in an incomplete manner leads us to the only conclusion that the Tribunal has failed to perform its duty and in accordance with law.

16. We have, therefore, no alternative but to allow these Appeals and instead of, as desired by the Revenue, we undertaking the exercise which the Tribunal is expected to undertake and complete, we would prefer to allow both sides a fair opportunity and before the Tribunal itself. We do not wish to conclude the matter and to the detriment or interest of either parties for they would lose one valuable right of Appeal in the event of an adverse order.

17. For the above reasons, we allow these Appeals by setting aside the order of the Tribunal and restore both the Appeals of the Assessee and the Deputy Managing Director to the file of the Tribunal for being decided afresh on merits and in accordance with law. While deciding them afresh, the Tribunal should not influence itself by any finding in the impugned order which we have quashed and set aside nor it should be influenced by our setting aside its order. For we clarify that we only emphasize the controversy between the parties and not expressed any opinion thereon. All contentions of both sides are kept open.

(G. S. PATEL, J.) **(S. C. DHARMADHIKARI, J.)**